IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4865 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-
and
Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

POLARBHAI KESARBHAI

Versus

EXECUTIVE ENGINEER

Appearance:

MR GM AMIN for Petitioners

MR MUKESH PATEL AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE M.R.CALLA
and
MR.JUSTICE D.H.WAGHELA

Date of decision: 19/03/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.R.CALLA)

1. Mr.G.M.Amin for the petitioners and Mr.Mukesh Patel, learned Assistant Government Pleader for the respondents.

2. This petition is pending since 1990 although other connected petitions No.1615/90, 1616/90, 1618/90, 1619/90, 1620/90, 6686/90 to 6692/90, 4859/90 to 4864/90 and 671/90 to 6685/90 were disposed of on 15.4.1998 by a common order. Special Civil Application No.1617/90 was disposed of on 28.1.1991 and yet another Special Civil Application No.1621/90 was also decided by us only on 17.3.2001.

3. The petitioners came with the case that possession of the lands situated at village Goraj, taluka Sanand, district Ahmedabad was taken by the Executive Engineer of the Irrigation Department for the purpose of Fatehwadi Canal Branch No.1 passing through Goraj-Lekhamba-Jambudi about 8 to 9 years back with the anticipation that the petitioners will be paid compensation as per the provisions of the Land Acquisition Act, and whereas compensation had not been paid, a direction was sought and no acquisition proceedings were initiated, a direction was sought calling upon the respondent to pay 80% of the compensation. It is, of course, true that in this petition no reply has been filed. However, no documentary evidence of contemporaneous nature has been filed on record by the petitioners to show that possession has been taken. The learned Assistant Government Pleader is also not in a position to give any factual position even on the basis of the record. In this view of the matter, we are left with no option but to decide this petition with the observations that, in case the possession has been taken, the acquisition proceedings be conducted in accordance with law and compensation be paid in terms of the award which may be passed in the acquisition proceedings. In case the possession has not been taken and the Government does not require the lands in question, the matter would stand at rest as it is, unless the Government decides to acquire the lands for which the Government may proceed in accordance with law.

4. This petition is disposed of and Rule is discharged accordingly.

Sd/-

(M.R.Calla, J.)

Sd/-

19.3.2001 (D.H.Waghela, J.)

(KMG Thilake)